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**IN THE
COURT OF APPEALS OF INDIANA**

CRAIG WILSON,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A03-0610-CR-510

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0511-FB-167

June 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Craig Wilson appeals his convictions for two counts of Class B felony burglary. We affirm.

Issue

The sole issue Wilson raises on appeal is whether the evidence was sufficient to convict him of two counts of burglary.

Facts

On November 22, 2005, at about 8:45 p.m., Sergeant Joel Squadrito and Officer Cesar DeJesus of the Fort Wayne police department were patrolling a residential area in an unmarked patrol car for the purpose of burglary suppression. Sergeant Squadrito saw a black male, later identified as Wilson, in dark clothing walking through an alley and carrying a square item under his left arm. The officers turned down the alley, and within ten to fifteen seconds Wilson started running away. Officer DeJesus proceeded on foot after Wilson. Sergeant Squadrito broadcast on the radio that they were chasing a burglary suspect; he described the suspect and the direction in which the suspect was running. Meanwhile, Officer DeJesus lost sight of Wilson but found a DVD player on the ground in the alley through which Wilson had just passed. Within five or six seconds after Sergeant Squadrito broadcast the description of the suspect, Officers Nicklow and Hughs, who were patrolling nearby, saw a suspect fitting the description and running in the direction given by Sergeant Squadrito. The officers radioed that they were in pursuit of the suspect. Officer Nicklow chased Wilson on foot down the street and through some

residential lawns. He never lost sight of Wilson during the chase. Wilson stumbled into the side of a police car belonging to another officer, Kevin Weber, who was also in the area responding to Sergeant Squadrito's broadcast. Wilson got up and ran around the car, and Officer Weber could see that Wilson was empty-handed. Wilson entered a vacant home through a basement window. The officers surrounded the home and entered it to apprehend Wilson. Officers found a set of keys on the floor about five feet away from Wilson. Inside the vacant home, a dark coat was also found. In the yard adjacent to the vacant home, a dark hat was discovered.

Earlier that evening, at about 7:30 p.m., Louise Dietzer-Hensley discovered that her home had been broken into while she was at work; she lived about two blocks away from the area in which Sergeant Squadrito originally saw Wilson. Dietzer-Hensley's home had been entered through a basement window. The window and a security bar that ran across the window had been broken. She discovered that a DVD recorder and a set of spare keys were missing. The keys were later confirmed to be the same keys that were found near Wilson in the vacant home where he was apprehended. Her DVD recorder was not recovered.

At about 11:15 p.m., after Wilson had been arrested, Dennis Osmun discovered that his home had also been broken into while he was at work; he lived about 50 feet from the area in which Sergeant Squadrito first saw Wilson. Osmun's home had also been entered through a basement window. The window glass had been removed and the screen was cut. Osmun discovered that he was missing a DVD player, which officers

later identified by the serial number as the same DVD player that Officer DeJesus had found while pursuing Wilson in an adjacent alley several hours earlier.

Wilson was charged with two counts of Class B felony burglary, two counts of Class D felony possession of stolen property, and two counts of Class A misdemeanor resisting law enforcement. A jury found him guilty on all counts. The trial court merged the two possession of stolen property counts with the two burglary counts. The trial court sentenced Wilson to fifteen years for each burglary conviction, to be served consecutively, and one year for each resisting law enforcement conviction, to be served concurrent with one another but consecutive to the burglary convictions. Wilson now appeals his burglary convictions.

Analysis

Wilson argues that the evidence was insufficient to convict him of either burglary count.¹ When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Trimble v. State, 848 N.E.2d 278, 279 (Ind. 2006). We will affirm if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Williams v. State, 834 N.E.2d 225, 229 (Ind. Ct. App. 2005).

¹ Wilson also briefly argues that there was insufficient evidence to prove that he was guilty of the two counts of possession of stolen property. However, the trial court found that those two counts merged with the burglary counts and did not enter a judgment of conviction for the counts of possession of stolen property. Because Wilson did not receive convictions for these counts, we will not address his argument that there was insufficient evidence to support them.

In order to convict Wilson of burglary, the State had to prove beyond a reasonable doubt that he broke and entered the building or structure of another person with intent to commit a felony in it. See Ind. Code § 35-43-2-1. To establish the intent to commit a felony element of a burglary charge, the State must prove beyond a reasonable doubt the defendant's intent to commit the felony specified in the charge. Freshwater v. State, 853 N.E.2d 941, 942 (Ind. 2006). The felony specified in the charge against Wilson for both counts was theft, which is the knowing or intentional exertion of unauthorized control over the property of another with the intent to deprive the owner of its value or use. See I.C. § 35-43-4-2(a).

Wilson specifically argues that the State failed to prove that Wilson broke and entered the homes or that he had the intent to commit a felony. The element of breaking is satisfied by showing that even the slightest force was used to gain unauthorized entry. Payne v. State, 777 N.E.2d 63, 66 (Ind. Ct. App. 2001). Dietzer-Hensley discovered that her basement window and security bar were broken. Someone had entered her home, “ransacked” nearly every room, and taken her DVD recorder and her keys. Tr. p. 46. Osmun found that the storm window to his basement had been removed and the screen was cut. Someone had entered his home and taken his DVD player. There is sufficient evidence that breaking and entering occurred at each residence.

Wilson argues that there were no fingerprints recovered or eyewitnesses to prove that he committed the breaking and entering. However, a burglary or theft conviction may be sustained by circumstantial evidence alone. Miller v. State, 544 N.E.2d 141, 143 (Ind. 1989).

Wilson analogizes this case to that of Kidd v. State, 530 N.E.2d 287, 288 (Ind. 1988). In Kidd, a defendant sold a few guns that had been taken in a burglary two to four days prior to the sale. He also sold stolen stereo equipment that had been taken in a burglary three days prior to the sale. Our supreme court reversed the burglary convictions, holding that possession of stolen goods and false statements about the origin of those goods was insufficient to prove burglary. Kidd, 530 N.E.2d at 288. To hold otherwise would provide that “evidence sufficient to prove possession of stolen property would necessarily and inevitably support a further conviction for burglary. . . .” Id. We conclude that this case is inapposite because of the differences in the gaps of time between the burglaries and the possession of stolen items. Kidd was in possession of items that had been stolen at least two days prior. Wilson was in possession of items that had been stolen, at maximum, a few hours earlier.

The factual circumstances of Wilson’s case are very similar to Miller v. State, 544 N.E.2d 141, 143 (Ind. 1989), in which our supreme court confirmed that the “[u]nexplained possession of recently stolen property will support an inference of guilt of theft of that property” (emphasis added). In Miller, the defendant entered a home and triggered a silent alarm. An officer responding to that alarm a few minutes later saw the defendant running away from the residence. The officer identified himself, and the defendant kept running, causing the officer to lose sight of him. The officer broadcast a description of the defendant, and officers nearby recognized him and arrested him about two blocks away. The defendant was placed in a police vehicle. Later, an officer found a gemstone on the floor of the police vehicle. Another officer later located a ring missing a

gemstone and a jewelry box hidden in the vehicle. The homeowner identified the items as his. The court held that there was sufficient evidence to uphold the defendant's conviction for burglary because he was seen running from the residence, he fled from the police, he was arrested a few blocks from the burglarized home, and he was in possession of recently stolen property from the home. Miller, 544 N.E.2d at 143.

In Allen v. State, 743 N.E.2d 1222, 1231 (Ind. Ct. App. 2001) the defendant was involved in a traffic accident a few hours after four burglaries had occurred. Witnesses at the traffic accident saw items in the defendant's vehicle that had been taken from the homes that had been burglarized. Police seized the items at the defendant's home the next day. Our court held that the items constituted "recently stolen property" in the possession of the defendant and were, therefore, sufficient to support his conviction for burglary. Allen, 743 N.E.2d at 1232.

The circumstantial evidence in this case demonstrates that officers initially saw Wilson within two blocks of Dietzer-Hensley's home and within 50 feet of Osmun's home, both of which had been recently burglarized. Wilson fled from the police. Officers saw him holding something square at first, and later officers saw that he was empty-handed. Osmun's DVD player was found on the ground in the area where Wilson had just been running. Dietzer-Hensley's keys were found on the floor of a vacant home about five feet from where Wilson was apprehended. This evidence is sufficient for the jury to conclude beyond a reasonable doubt that Wilson had broken and entered into Dietzer-Hensley and Osmun's homes with the intent to commit theft.

Conclusion

The State presented sufficient evidence to convict Wilson of two counts of Class B felony burglary. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.